

## CONSENT DECREE

### I. INTRODUCTION

1. The Enforcement Bureau (“the Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and Western Slope Communications, LLC, (“Western Slope”) owner of antenna structure number 1023390, near Rifle, Colorado, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating an enforcement proceeding relating to whether Western Slope violated Section 303(q) of the Communications Act of 1934, as amended, (“Act”),<sup>1</sup> and Sections 17.51(a), 17.47(a), 17.48, and 17.57 of the Commission's Rules (“Rules”).<sup>2</sup>

### II. DEFINITIONS

2. For purposes of this Consent Decree, the following definitions shall apply:
- a. “Act” means the Communications Act of 1934, as amended, Title 47 of the United States Code.
  - b. “Adopting Order” means an order of the Bureau adopting the terms and conditions of this Consent Decree.
  - c. “Bureau” means the Commission’s Enforcement Bureau.
  - d. “Commission” or “FCC” means the Federal Communications Commission.
  - e. “Effective Date” means the date the Adopting Order is released by the Bureau.
  - f. “Enforcement Proceeding” means the FCC investigation into the alleged Rule and Act violation by Western Slope culminating in the *Notice of Apparent Liability for Forfeiture*.
  - g. “*Forfeiture Order*” means the order released by the Western Region of the Enforcement Bureau, assessing a \$13,000 forfeiture to Western Slope: *Western Slope Communications, LLC, Forfeiture Order*, 23 FCC Rcd 8384 (EB 2008).
  - h. “*Notice of Apparent Liability for Forfeiture*” or “NAL” means *Western Slope Communications, LLC, Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200832800001 (Enf. Bur., Western Region, Denver Office, released December 7, 2007).
  - i. “Parties” means Western Slope and the Bureau.
  - j. “*Petition for Reconsideration*” means the petition for reconsideration filed by Western Slope on June 30, 2008, concerning the Western Region’s *Forfeiture Order*.

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<sup>1</sup> 47 U.S.C. § 303(q).

<sup>2</sup> 47 C.F.R. §§ 17.47(a), 17.48, 17.51(a), 17.57.

- k. "Rules" means the Commission's Rules found in Title 47 of the Code of Federal Regulations.
- l. "Western Slope" means Western Slope Communications, LLC, its subsidiaries, affiliates, and any successors or assigns.

### III. BACKGROUND

3. Antenna structure number 1023390 is an antenna tower of 84.0 meters (275.6 feet) in height above ground. According to the antenna structure registration ("ASR") for antenna structure number 1023390, the structure is required to be painted and lit in accordance with specific Chapters of the FAA Advisory Circular for Obstruction Marking and Lighting.<sup>3</sup> Specifically, the structure is required to be painted,<sup>4</sup> and have, at its top, a flashing beacon equipped with two lamps and red filters, along with at least two lamps enclosed in red obstruction light globes<sup>5</sup> located on a level at approximately one-half the overall height of the tower.<sup>6</sup> The lights on antenna structure number 1023390 are required to burn continuously or be controlled by a light sensitive device.<sup>7</sup>

4. On April 23, 2007, at 6:39 p.m., an email was received by the Enforcement Bureau's Denver office from a police officer with the city of Rifle, Colorado. The email stated that there was a concerned citizen in Rifle, Colorado, who had observed a 400 foot tower near the citizen's home with the top beacon "out for the last two weeks." A Denver agent determined the antenna structure to have registration number 1023390, registered to David L. Johnson ("Johnson").

5. On April 24, 2007, the Denver agent contacted the Federal Aviation Administration ("FAA") Flight Service Station to determine if the tower light outage had been reported. The FAA reported that they had not received any information concerning a tower light outage and advised that a Notice to Airmen ("NOTAM") would be issued concerning the reported tower light outage for antenna structure number 1023390. The FAA Flight Service Station then issued NOTAM number RIL 04/011.

6. On May 9, 2007 the FCC agent contacted the Rifle Police Department about their observations of the tower lights associated with antenna registration number 1023390. An officer contacted the Denver agent and reported that he had received information indicating that the "top beacon was still out." The Denver agent later confirmed that the outage was observed, by a Rifle officer, during the night of May 5, 2007.

7. On May 9, 2007, at approximately 8:25 a.m., MDT, the Denver agent again reported the tower outage to the FAA. The FAA promptly issued a NOTAM for antenna structure number 1023390, assigning it reference number RIL 05/004. No other NOTAM had been issued since the Denver agent first called to report the tower light outage on April 24, 2007.

8. On May 15, 2007, Denver agents made several observations of the tower structure with registration number 1023390. At approximately 9:00 p.m., MDT, they observed that all of the tower's

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<sup>3</sup> FAA Circular Number 70/7460-1J, Chapters 3, 4, 5 and 13.

<sup>4</sup> FAA Circular Number 70/7460-1J, Chapters 3 and 13.

<sup>5</sup> FAA Circular Number 70/7460-1J, Chapters 4, 5 and 13.

<sup>6</sup> FAA Circular Number 70/7460-1J, Appendix 1, Figure 11.

<sup>7</sup> FAA Circular Number 70/7460-1J, Chapters 5 and 13.

obstruction lighting, top beacon and side lights, had failed.<sup>8</sup>

9. On May 16, 2007, Denver agents went to the main studio of KRGS, an AM station broadcasting from antenna structure number 1023390, at 751 Horizon Court, Suite 200, Grand Junction, Colorado, to examine any records concerning tower light outages.<sup>9</sup> Agents conducted a review of KRGS(AM)'s station records with the general manager and contract engineer. The general manager provided the KRGS(AM) tower light logs for inspection. The last entry was from November 20, 2006. The agents found no entries in the logs concerning any tower outages for the month of April 2007 up to the day of their visit on May 16, 2007. The general manager said that he was not aware of any lighting problems at the tower site prior to the agents' inspection.

10. Still on the afternoon of May 16, 2007, Denver agents drove to the tower site in Rifle, Colorado, and met with the KRGS(AM) general manager and contract engineer. When the remote automatic tower light indicator system was checked, it reported no current for the tower light system while at the transmitter site. Apparently, this remote system, designed to register any tower lighting failures, had not been notifying Western Slope. The contract engineer determined the comprehensive lighting outage to be a result of a faulty A/C neutral wire. While agents were on-site, the contract engineer repaired the damaged wire. When the contract engineer covered the photocell, all of the lights, top beacon and mid-level side lights, were observed by the agents to be working properly. Finally, the contract engineer's maintenance logs, found at the transmitter site, showed the last entry reflecting an on-scene tower light inspection by him as being conducted on August 1, 2006.

11. On November 14, 2007, further investigation by the Denver Office revealed that Johnson was not the current owner of antenna structure number 1023390, despite the fact that Johnson was listed as the owner in the Commission's ASR database. Johnson was the former general manager for KRGS(AM) and was no longer associated with the station. A Denver agent contacted the KRGS(AM) general manager to determine the current tower owner.

12. On November 16, 2007, the regional manager for Western Slope contacted the Denver agent and informed him that Western Slope Communications had purchased the land and antenna structure number 1023390 from Johnson in 1996.

13. On November 20, 2007, the Denver agent queried the FCC's ASR database, finding that a change in ownership had been completed. The data found for antenna structure registration number 1023390 reflected the owner to be Western Slope Communications, LLC. The reference copy of the "FCC Application for Antenna Structure Registration" (FCC 854 Main Form), file number A0569481, showed that an application was made on November 19, 2007, to change the ownership.

14. On December 7, 2007, the Enforcement Bureau's Denver Office issued a *Notice of Apparent Liability for Forfeiture* ("NAL") in the amount of \$13,000 to Western Slope, finding that Western Slope apparently repeatedly violated Section 303(q) of the Act and Section 17.51(a) of the Rules by failing to exhibit the structure's red obstruction lighting from sunset to sunrise; and by failing to make observations of the antenna structure's lights at least once each 24 hours either visually or by observing an automatic properly maintained indicator designed to register any failure of such lights, a violation of Section 17.47(a) of the Rules. The Denver Office found that Western Slope's failure to make the required observations of the lighting on the antenna structure resulted in its failure to notify the nearest Flight Service Station of the Federal Aviation Administration ("FAA") of the outage of the flashing obstruction lights, a violation of Section 17.48 of the Rules. The Denver Office also found that Western Slope apparently

<sup>8</sup> According to the U.S. Naval Observatory, sunset in Rifle, Colorado, occurred at 8:18 p.m., MDT, on May 15, 2007.

<sup>9</sup> Western Slope is the licensee of KRGS(AM), Rifle, Colorado.

repeatedly failed to immediately notify the Commission of a change in ownership information for antenna structure number 1023390, a violation of section 17.57 of the Rules. Western Slope filed a response to the NAL on January 7, 2008 ("*Response*"). On May 30, 2008, after reviewing Western Slope's *Response*, the Western Region, Enforcement Bureau, released the *Forfeiture Order*, and imposed a \$13,000 forfeiture on Western Slope for its repeated violation of Section 303(q) of the Act and sections 17.51, 17.47(a), 17.48 and 17.57 of the Rules. On June 30, 2008, Western Slope filed a petition for reconsideration of the *Forfeiture Order*.

#### IV. TERMS OF SETTLEMENT

15. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

16. The Parties agree that this Consent Decree shall not constitute an adjudication on the merits or a factual or legal determination regarding any compliance or noncompliance with the Act or the Rules. The Parties further agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Western Slope does not admit or deny any noncompliance, violation, or liability associated with or arising from its acts or omissions involving the Rules that are the subject of this Consent Decree.

17. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

18. The Parties acknowledge and agree that this Consent Decree shall constitute a final and binding settlement between Western Slope and the Bureau regarding possible violations of the Rules and the Act with respect to the registration and the painting and lighting exhibited on antenna structure number 1023390 prior to the Effective Date of this Consent decree. In express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau agrees to terminate the Enforcement Proceeding and cancel the *Forfeiture Order*.

19. In consideration for the termination by the Bureau of the Enforcement Proceeding and in accordance with the terms of this Consent Decree, Western Slope agrees to the terms, conditions and procedures contained herein, and agrees to withdraw the *Petition for Reconsideration* within 30 calendar days of the Effective Date.

20. Western Slope acknowledges that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

21. Western Slope agrees to make a voluntary contribution to the United States Treasury in the amount of six thousand, five hundred, dollars (\$6,500) within 30 calendar days after the Effective Date. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Western Slope shall also send electronic notification on the date said payment is

made to WR-Response@fcc.gov.

22. Western Slope also agrees that, as of the Effective Date, the following Compliance Plan will be put into place:

- a. Western Slope shall install an automatic outage monitoring system to detect light outages and malfunctions on antenna structure number 1023390, which will be checked monthly to confirm that it is operating properly.
- b. An employee or agent of Western Slope will make a daily visual observation of the automatic outage monitoring system, referenced in paragraph 22(a), above,
- c. Western Slope management will perform a monthly review of the outage log for antenna structure number 1023390.
- d. Western Slope will provide a contact telephone number to local police for emergency contact purposes.

23. The Bureau agrees that, in the absence of new material evidence, it will not entertain, or institute on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Western Slope for any alleged violation of the Act or the Rules regarding the matters that were the subject of the Enforcement Proceeding. The Bureau also agrees that, in the absence of new material evidence, it will not initiate or recommend to the Commission any new proceeding, formal or informal, against Western Slope regarding the matters that were the subject of the Enforcement Proceeding. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Enforcement Proceeding through the Effective Date to initiate on its own motion, or recommend to the Commission any new proceeding, formal or informal, or take any action on its own motion against Western Slope with respect to Western Slope's basic qualifications to hold Commission licenses or authorizations. Nothing in this Consent Decree shall prevent the Commission from instituting investigations or enforcement proceedings against Western Slope in the event of any other alleged misconduct that violates this Consent Decree or which violates any provision of the Act or the Rules.

24. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Western Slope fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

25. The Parties agree that any provision of this Consent Decree which conflicts with any subsequent rule, order of general applicability or other decision of general applicability adopted by the Commission will be superseded by such Commission rule, order or other decision.

26. Western Slope's decision to enter into this Consent Decree is expressly contingent upon the Bureau's issuance of an Adopting Order that is consistent with this Consent Decree, and which adopts the Consent Decree without change, addition, modification, or deletion.

27. The Parties waive any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided that the Adopting Order adopts the Consent Decree without change, addition, or modification.

28. The Parties agree that if any court of competent jurisdiction renders this Consent Decree invalid, it shall become null and void and may not be used in any manner in any legal proceeding.

29. The Parties agree that if either party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither Western Slope nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Western Slope and the Commission shall waive any statutory right to a trial *de novo* with respect to any matter upon which the Adopting Order is based, and shall consent to a judgment incorporating the terms of the Consent Decree.

21. Western Slope agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to matters discussed in this Consent Decree.

22. This Consent Decree cannot be modified without the advance written consent of both Parties.

23. This Consent Decree may be signed in counterparts.

**For the Enforcement Bureau:**

By: \_\_\_\_\_  
George R. Dillon, Deputy Chief

\_\_\_\_\_  
Date

**For Western Slope Communications, LLC:**

By: \_\_\_\_\_  
Allen H. Brill, Manager

\_\_\_\_\_  
Date